

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 4:07-CR-654-ERW  
 )  
 CORTEZ D. SIPES, )  
 )  
 Defendant. )

**SENTENCING HEARING**

BEFORE THE HONORABLE E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE

**JULY 14, 2008**

**APPEARANCES:**

For Plaintiff: Cristian M. Stevens, AUSA  
**OFFICE OF U.S. ATTORNEY**  
 111 South Tenth Street, 20th Floor  
 St. Louis, MO 63102

For Defendant: Kristy Lynn Ridings, Esq.  
**WELBY AND RIDINGS, LLC**  
 1010 Market Street, Suite 1720  
 St. Louis, MO 63101

REPORTED BY: Gayle D. Madden, CSR, RDR, CRR  
Official Court Reporter  
United States District Court  
111 South Tenth Street, Third Floor  
St. Louis, MO 63102  
(314) 244-7987

1 (Proceedings started at 2:39 p.m.)

2 (The following proceedings were held in open court and  
3 with the Defendant present.)

4 THE COURT: The case number or the style of the case  
5 is Cortez D. Sipes versus or United States versus Cortez  
6 Sipes. I'll get it right in a minute. S1-4:07-CR-00654-ERW.

7 Is the Government ready?

8 MR. STEVENS: Yes, Your Honor.

9 THE COURT: Defendant ready?

10 MS. RIDINGS: Yes, Your Honor.

11 THE COURT: There are no objections, is that true?

12 MS. RIDINGS: That is true, Your Honor. I had not  
13 filed a written statement. We needed some clarification with  
14 regard to my client's priors. The formal records, the  
15 official records, have been received by the Probation Office  
16 and were shown to me as well as my client this morning in  
17 court. We're satisfied with those records. We would have no  
18 objection. My client did ask me to point out, though, in  
19 paragraph 53, he pointed out to me today that it indicates  
20 Missouri Board of Probation and Parole records indicate he has  
21 a gang-related tatoo described as "Crips" on his arm with the  
22 nickname "Dove" inscribed, and he says he does not have that  
23 tattoo, Your Honor, and I understand the records may indicate  
24 that, but that is not on his arm.

25 THE COURT: Okay. Well, I will direct that the

1 paragraph 53 that starts with "According to" and ends with  
2 "cross" be redacted. Any objection, Mr. Stevens?

3 MR. STEVENS: No objection from the Government, Your  
4 Honor.

5 THE COURT: The Presentence Report is accordingly  
6 ordered amended.

7 MS. RIDINGS: Thank you, Your Honor.

8 THE COURT: Thank you.

9 I shall now proceed to make calculations under the  
10 United States Sentencing Guidelines. First, let me say I  
11 recognize that since January 12th, 2005, those Guidelines are  
12 advisory and not mandatory. On that date, the United States  
13 Supreme Court said the Guidelines were only advisory, not  
14 mandatory. They still require judges to make calculations  
15 under the Guidelines, to arrive at a sentencing range, and to  
16 consider that range along with other factors.

17 Today, those factors I'll be considering include the  
18 impact of the parties' Plea Agreement on any sentencing  
19 issues. I'll be hearing evidence that either party cares to  
20 present. I'll hear statements of counsel and of Mr. Sipes if  
21 he cares to speak. I'll then decide if any departures should  
22 be made under the Guidelines.

23 I'll consider all the factors in 18 United States  
24 Code § 3553(a) to decide whether to impose a Guideline  
25 sentence or a non-Guideline sentence. Those factors include

1 the nature and circumstances of the offense and history and  
2 characteristics of the defendant, the need for the sentence  
3 imposed to reflect the seriousness of the offense, to promote  
4 respect for the law, and to provide just punishment for the  
5 offense, to afford adequate deterrence to criminal conduct, to  
6 protect the public from further crimes of the defendant, to  
7 provide the defendant with needed educational or vocational  
8 training, medical care, or other correctional treatment in the  
9 most effective manner, the kinds of sentences available, and  
10 the need to avoid sentencing disparity among similarly  
11 situated defendants facing similarly situated offenses.

12 In this case, the 2007 edition of the Guideline  
13 manual was used. The Guideline for violation of 18 United  
14 States Code § 922(g)(1) is found in 2K2.1 of the manual.  
15 Mr. Sipes has one prior conviction for a crime of violence,  
16 being an assault of a law enforcement officer,  
17 Document No. 22051-00480-01. The base offense level is 20.  
18 Four levels are added because the firearm had an altered or  
19 obliterated serial number under 2K2.1(b)(4). Three levels are  
20 reduced for Mr. Sipes' full and timely acceptance of  
21 responsibility under 3E1.1 (a) and (b). The total offense  
22 level is 21. His criminal history category is IV. The  
23 sentencing range is from 51 to 71 months. Those crimes  
24 consist of possession of a controlled substance in '04, Count  
25 II, possession of up to 35 grams of marijuana; in '05, assault

1 of a law enforcement officer, Count II, resisting arrest; and  
2 five, possession of a controlled substance.

3 At this time, do you have any lawful cause or reason  
4 to assign to the Court or do you know of any reason why I  
5 should not sentence you at this time, Mr. Sipes?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: All right. I'll hear first from  
8 Mr. Stevens, then from Ms. Ridings, and finally from you, sir,  
9 if you care to speak.

10 MR. STEVENS: Thank you, Judge. I would just point  
11 out, during the course of plea negotiations, the Government  
12 agreed to dismiss two of the three counts in the indictment,  
13 and the Government would so move today. That leaves Count II,  
14 which the Defendant pleaded guilty to, which is possession of  
15 a firearm. As the Court noted, that firearm had an  
16 obliterated serial number, which raises concerns. The other  
17 concern the Government has in particular is the assault of a  
18 law enforcement officer prior conviction that this Defendant  
19 has in which the Defendant punched a police officer in the  
20 face. Obviously, that's a concern. It is counted as a crime  
21 of violence under the Guidelines, and for those reasons, the  
22 Government requests a sentence within the Guideline range,  
23 Your Honor.

24 THE COURT: All right. I do note that also the  
25 Government failed to or not failed to but under consideration

1 probably from negotiations with Ms. Ridings did not include a  
2 four-point violation that might otherwise have been added, is  
3 that correct?

4 MR. STEVENS: That's correct, Judge. That was  
5 directly in response to a request by Ms. Ridings, and that was  
6 an issue we negotiated during the course of the Plea  
7 Agreement.

8 THE COURT: All right. Thank you. Ms. Ridings.

9 MS. RIDINGS: Thank you, Your Honor. I would also  
10 ask the Court to sentence my client within the Guideline  
11 range. Specifically, I would ask the Court to consider a  
12 sentence at the low end. My client does have an extended  
13 criminal history for his young age. I would point out to the  
14 Court that shortly before this offense took place his father  
15 was murdered. Mr. Sipes had an incredibly difficult time  
16 dealing with that murder. Certainly, he's had a lot of time  
17 to think about it during his current period of incarceration.

18 I would point out, Judge, that Mr. Sipes is the  
19 primary caregiver for his five-year-old and four-year-old  
20 sons, and my conversations I've had with him -- more so than  
21 talking about this case, we've talked about his children.  
22 He's very eager to get back to them. Something that he said  
23 to me this morning when I was visiting with him is actually  
24 something I usually hear from the bench. He said, "I just  
25 need to get out of here and stay away from the fools I've been

1 dealing with." So --

2 THE COURT: Boy, is that ever -- is that ever right.

3 MS. RIDINGS: Yes. So I was actually very impressed  
4 with that, Your Honor, that that came before hearing that come  
5 from the Court. Those things taken into consideration, Your  
6 Honor, I would ask the Court to consider a sentence at the low  
7 end.

8 THE COURT: Okay. I'm interesting in hearing what  
9 you have to say, but I want to look at some things first. You  
10 have a lot of people here today, don't you?

11 THE DEFENDANT: (Nods head up and down.)

12 THE COURT: They haven't given up on you yet, have  
13 they?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: You know, there's going to come a time if  
16 you continue messing around with drugs and you'll be before --

17 That's okay. Don't worry about the child talking.  
18 That's okay. Children have a way of talking, and it's music  
19 to my ears, and it doesn't bother me a bit.

20 You'll look around sooner or later, and there won't  
21 be anybody back there because they're going to get tired of  
22 hearing you say you're sorry and you'll never do it again, and  
23 so that's one thing.

24 The other thing -- it shows you've never held  
25 employment. What's that all about? You've never had a job in

1 your life?

2 THE DEFENDANT: Like, I had -- I had a job, but it  
3 wasn't for that long. It was like a week or two.

4 THE COURT: Well, you told Ms. Ridings you want to  
5 get back and support your family. How are you going to  
6 support them if it's not dealing drugs?

7 THE DEFENDANT: I have an uncle who rehab houses.

8 THE COURT: Okay.

9 THE DEFENDANT: He said I could come on with him.

10 THE COURT: Okay. Well, you have good health. You  
11 have no history of a mental problem. You have someone who,  
12 apparently, is staying by you with your kids. You suffered  
13 grievously the loss of your father. You've refused to discuss  
14 your drug usage, so I don't really know what that's all about.

15 So there are some positive things. With this -- when  
16 I see this kind of family support, it usually means there's  
17 something really good about the person because I don't see  
18 that a lot.

19 So if you care to speak, this is your chance. I'd be  
20 glad to hear whatever you have to say.

21 THE DEFENDANT: Your Honor, basically, I've said all  
22 I have to say.

23 MS. RIDINGS: May I have a word with my client, Your  
24 Honor?

25 THE COURT: Sure.



1 THE DEFENDANT: Your Honor --

2 THE COURT: Go ahead.

3 THE DEFENDANT: Your Honor, I would like to take this  
4 time to apologize to my family for taking them through these  
5 things and to tell them that I'm sorry and that in the future  
6 I'm going to make it right.

7 THE COURT: You know, I really believe you're sincere  
8 about that because you -- you mentioned to Ms. Ridings, who is  
9 a very good lawyer, that -- because she pointed -- picked up  
10 on it, too -- we don't often hear a person realize that the  
11 biggest problem in their life is dealing -- when they have as  
12 much drug experience as you have, it comes from hanging around  
13 with the wrong people. It's not complicated. If you have a  
14 smart guy like you and you start hanging around knuckleheads,  
15 it gets you in trouble and you go right back to hanging out  
16 with them, then you're dumber than they are. So if you've  
17 already figured out that you need to change your company,  
18 maybe move to a different city, maybe a different state, your  
19 whole life could be different, but if you do the same thing  
20 over and over again, then the problem you're going to have is  
21 if you ever come back to federal court with all these drug  
22 convictions, the next time you're here, you're going to be  
23 looking at a life sentence. So you've really dug yourself a  
24 hole. You have to change. You have to change because if you  
25 don't you're going to spend the rest of your life in prison.

1 Just it's not complicated.

2           Okay. Well, enough of that. I just -- I -- I always  
3 feel more sorry for the family than I do for the person who  
4 stands here because you made the decisions and they're the  
5 ones that have to suffer along with you, and it's always --  
6 it's always difficult to have to look them in the face and  
7 send somebody to prison. I'd rather be sending you to  
8 business school or someplace, but that's not possible.

9           Under the Sentencing Reform Act of 1984 and the  
10 provisions of 18 United States Code § 3553(a), it is the  
11 Judgment of the Court that Mr. Cortez D. Sipes is committed to  
12 the custody of the Bureau of Prisons to be imprisoned for a  
13 term of 57 months. That's the lowest sentence that is  
14 available today based on the Plea Agreement.

15           While in the custody of the Bureau of Prisons, it is  
16 recommended that Defendant be evaluated for participation in  
17 the Residential Drug Abuse Program if consistent with Bureau  
18 of Prisons policies.

19           Upon release from imprisonment, he shall be placed on  
20 supervised release for a term of two years.

21           Within 72 hours of release from the custody of the  
22 Bureau of Prisons, he shall report in person to the Probation  
23 Office in the district to which he is released.

24           While on supervision, he shall comply with the  
25 standard conditions that have been adopted by this Court and

1 shall comply with the following additional conditions:

2 He shall refrain from any unlawful use of a  
3 controlled substance and submit to a drug test within 15 days  
4 of the beginning of supervision and at least two periodic drug  
5 tests thereafter for use of a controlled substance.

6 He shall participate in a drug or alcohol abuse  
7 treatment program approved by the United States Probation  
8 Office, which may include substance abuse testing, counseling,  
9 residence in a community corrections center, residence in a  
10 comprehensive sanctions center, residential reentry center, or  
11 inpatient treatment in a treatment center or hospital. He  
12 shall pay costs associated with substance abuse services based  
13 on a copayment fee established by the United States Probation  
14 Office. Copayments shall never exceed the total cost of  
15 services provided.

16 He shall submit his person, residence, office, or  
17 vehicle to a search or searches conducted by the United States  
18 Probation Office at reasonable times and in a reasonable  
19 manner based upon reasonable suspicion of contraband or  
20 evidence of a violation of a condition of release. He shall  
21 warn any other residents that the premises may be subject to  
22 searches under this condition.

23 This says if not obtained while in the Bureau of  
24 Prisons' custody that you get your GED under supervision. I'm  
25 telling you to get the GED while you're in prison and get some

1 more classes. I'm going to make -- try to make some classes  
2 available to you, and take advantage of every technical  
3 opportunity that you can have to get some training. If you've  
4 never been employed, at your age and with the amount of money  
5 it's going to take to support this family, you're going to  
6 have to be better prepared to get a better job, so you better  
7 start now in preparing yourself for that better job when you  
8 get out of prison.

9           The Court orders no fine. Mr. Sipes has a negative  
10 net worth of \$275. No fine is imposed. He has no ability to  
11 pay a fine. I must order a special assessment of \$100 which  
12 is due and payable immediately or as soon thereafter as he can  
13 make the payment.

14           I have the option of running that other sentence  
15 consecutively to or concurrently to this sentence, and I'm  
16 choosing to run it concurrently, so this sentence shall run  
17 concurrently to the sentence in 4:0 -- or strike that -- in  
18 051 -- 051-3458.

19           Any notice of appeal you have a right to file must be  
20 filed within 10 days of this date. If you're unable to pay  
21 the cost of an appeal, you may apply for leave to appeal in  
22 forma pauperis, and the Clerk of the Court shall assist you  
23 with those filings.

24           I'm recommending the 500-hour drug treatment program.

25           Are there any other recommendations, Ms. Ridings?

1 MS. RIDINGS: Your Honor, my client has asked that  
2 he, if possible, be placed in a facility as close to the  
3 St. Louis area as possible.

4 THE COURT: It is so recommended.

5 MS. RIDINGS: Thank you.

6 THE COURT: Don't disappoint these folks anymore.  
7 Yes.

8 MAN IN GALLERY: Yes. I would just like to introduce  
9 myself. I'm --

10 THE COURT: I can't hear you.

11 MAN IN GALLERY: I'd like to introduce myself. I'm  
12 Cortez's godfather.

13 THE COURT: Yes.

14 MAN IN GALLERY: She's right. He has been up under a  
15 number of stress or a lot of us have, but if you can make it  
16 easier for us to get to him, it would make it better for  
17 Cortez. Everything the Judge is telling him is right. Me and  
18 his father were best friends over 20 years, and the last time  
19 I talked to him was about three minutes before he got killed,  
20 and it is hard out there, but it don't make it no better when  
21 you have these here to look after, and the only thing I'm  
22 asking for him as a father -- do your best while you in there,  
23 and you'll do better out here because right now you are a  
24 bill. A phone call, money on the books -- that's a bill, and  
25 kids need to be taken care of, and he did have a job --

1 THE COURT: Okay.

2 MAN IN GALLERY: -- before he was snatched. The week  
3 that he was snatched, he was supposed to start.

4 THE COURT: Okay. Well, that's good.

5 MAN IN GALLERY: So I just wanted to let you know he  
6 do have people behind him.

7 THE COURT: Good. I can see that.

8 MAN IN GALLERY: If you can make it easier for the  
9 family, we would really appreciate that.

10 THE COURT: Okay. I'm going to --

11 MAN IN GALLERY: I'm sorry about everything.

12 THE COURT: Right. I'm going to recommend that he be  
13 placed as close to St. Louis as possible, and those facilities  
14 include Greenville, Marion. Now, I'll have to tell you all I  
15 can do is recommend, and once in a while, the Bureau of  
16 Prisons -- I recommended that one time, and the next thing I  
17 saw somebody appeared in California, and I did some  
18 investigation, and finally, they were sentenced at least back  
19 to Chicago, but I never did get a good explanation as to why  
20 they'd gone to California. I'm not suggesting it will happen,  
21 but I'm telling you they don't have to -- they don't have to  
22 accept what I recommend, but I will recommend it. Okay.

23 MAN IN GALLERY: Thank you.

24 THE COURT: Don't let those folks down now; you know  
25 what I mean?

1           Okay. All right. Court's in recess.

2           MR. STEVENS: Judge, I'm sorry. If I could --

3           THE COURT: Yes.

4           MR. STEVENS: -- I would move to dismiss Counts I and  
5           III.

6           THE COURT: Thank you. Thank you. I forgot. I and  
7           III is dismissed.

8           (Proceedings concluded at 2:57 p.m.)

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CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 15 inclusive.

Dated at St. Louis, Missouri, this 5th day of March, 2010.

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/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter